CA-3/9/99



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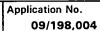
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Washington, D.C. 20231

APPLICATION NO. FILING DATE		FIRST NAMED INVENTOR			ATTORNEY DOCKET NO.	
09/198,004 1	1/23/98	CARVER		E	11631	0.014
Г		IM41/0309	7	EXAMINER		MINER
MARK D GIARRATANA			•	ALEXANDER, L		
CUMMINGS AND LOCKWOOD 700 STATE STREET		GRANITE SQUARE	•	ART	UNIT	PAPER NUMBER
P 0 BOX 1960		·	• .	1743		4
NEW HAVEN CT 06509-1960				DATE MAILED: 3/09/99		

Please find below and/or attached an Office communication concerning this application or proceeding.

**Commissioner of Patents and Trademarks** 



Lyle A. Alexander

Applicant(s)

Carver et al.

Office Action Summary

Examiner

Group Art Unit

1743

Responsive to communication(s) filed on			
☐ This action is <b>FINAL</b> .			
☐ Since this application is in condition for allowance except for in accordance with the practice under <i>Ex parte Quayle</i> , 193			
A shortened statutory period for response to this action is set is longer, from the mailing date of this communication. Failure application to become abandoned. (35 U.S.C. § 133). Extens 37 CFR 1.136(a).	to respond within the period for response will cause the		
Disposition of Claims			
	is/are pending in the application.		
Of the above, claim(s)	is/are withdrawn from consideration		
☐ Claim(s)	is/are allowed.		
☐ Claim(s)			
☐ Claims			
Application Papers			
See the attached Notice of Draftsperson's Patent Drawin	na Review, PTO-948.		
☐ The drawing(s) filed onis/are object			
☐ The proposed drawing correction, filed on			
☐ The specification is objected to by the Examiner.			
☐ The oath or declaration is objected to by the Examiner.			
Priority under 35 U.S.C. § 119			
☐ Acknowledgement is made of a claim for foreign priority	under 35 U.S.C. § 119(a)-(d).		
☐ All ☐ Some* ☐ None of the CERTIFIED copies of	of the priority documents have been		
received.			
received in Application No. (Series Code/Serial Nu	mber)		
$\square$ received in this national stage application from the	International Bureau (PCT Rule 17.2(a)).		
*Certified copies not received:			
☐ Acknowledgement is made of a claim for domestic prior	ity under 35 U.S.C. § 119(e).		
Attachment(s)			
Notice of References Cited, PTO-892     Notice of References Cited			
☐ Information Disclosure Statement(s), PTO-1449, Paper N	lo(s)		
<ul><li>☐ Interview Summary, PTO-413</li><li>☐ Notice of Draftsperson's Patent Drawing Review, PTO-9</li></ul>	48		
☐ Notice of Informal Patent Application, PTO-152			
SEE OFFICE ACTION ON	THE FOLLOWING PAGES		

Application/Control Number: 09/198,004

Art Unit: 1743

## **Double Patenting**

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d·2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-6, 40 and 42-43 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-28 of U.S. Patent No. 5,840,254. Although the conflicting claims are not identical, they are not patentably distinct from each other because both are directed to a similar apparatus encompassing a means for pumping a fluid stream, means for introducing at least one reagent mixture to the stream and means for analysis.

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## Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- 4. Claims 1-6 and 31-43 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Hansen et al., Cruzan or Parrent et al.
- 5. The cited prior art all teach methods and apparatus encompassing the claimed means for pumping a fluid stream, means for introducing at least one reagent mixture to the stream and means for analysis of the stream.
- 6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shartle teach the use of a mixing ball to ensure through mixing.
- 7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A. Alexander whose telephone number is (703) 308-3893.

LAA

March 8, 1999

LYLE A. ALEXANDER
PRIMARY EXAMINER